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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,521	01/23/2004	Yves Berthiaume	086171-0307182	5354

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EXAMINER

LUM VANNUCCI, LEE SIN YEE

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,521

Applicant(s)

BERTHIAUME, YVES

Examiner

Lee Lum

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-16 and 20 is/are rejected.
- 7) ☒ Claim(s) 11, 12 and 17-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “ramp” (Claim 5) must be shown or the feature canceled from the claim. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency.

Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 11, 16 and 19 are objected to because the following elements lack antecedent basis:

- in Claim 11 – swing arm pivot axis, driven pulley axis,
- in Claim 16 – driven pulley axis,
- in Claim 19 - drive system.

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3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The "ramp" is unclear/cannot be identified.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

A. **Claims 1-4, 6, 9 and 13** are rejected under 35 U.S.C. 102(b) as being anticipated by Tsutsumikoshi 6591934.

Tsutsumikoshi discloses a vehicle 1 comprising

Unitary frame 2, engine 41, straddle seat 26, handlebar 16,

The frame including members 3-9 that may be separately manufactured (i.e., separate elements),

Front 15, and rear 17, suspensions, the latter including swing arm 19, and shock absorber 20,

Front 14, and rear 18, wheels,

CVT 85 including

Housing 44 that comprises at least one frame member (unidentified; two portions of pipes 4 surrounding casing 44, c4, In 20-21), and comprises the lowest frame member (fig 2), and,

A load transmitted to the frame by the swing arm is borne by the housing, (i.e., housing comprises down pipes 4, which also comprise frame, c3, In 58-end), and shock absorber (inherent), and,

Drive 91, and driven 92, pulleys, and,
Transmission/frame member means 19 (c4, ln 14-16).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

A. As best understood, **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsutsumikoshi in view of Fukuda 6725962.

Tsutsumikoshi does not disclose the CVT as including pulleys and a centrifugal clutch, while Fukuda shows these well-known components

Drive 78, and driven 80, pulleys,

Centrifugal clutch 70 and ramp, *as best understood*, being proximally disposed on the latter.

It would have been obvious to one with ordinary skill in the art at the time the invention was made to include/identify these components, as shown in Fukuda, as well-known elements comprising the CVT.

B. **Claims 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsutsumikoshi in view of Gagnon.

Re Claim 7, Tsutsumikoshi does not disclose the vehicle as having two front, and one rear, wheels, but it is obvious that the vehicle components discussed above may be utilized in combination in different types of vehicles. The particular type of vehicle does not affect the proper operation of the combination of components.

Re Claim 8, Tsutsumikoshi does not disclose the vehicle as having two each, front and rear wheels, while Gagnon shows this configuration with front 305, and rear 309, wheels. It would have been obvious to one with ordinary skill in the art at the time the invention was made to include this arrangement, as shown in Gagnon, to provide another type of frame structure for a different application, thus increase applicability. It is clear that the above-mentioned vehicle can comprise any number of wheels, and this particular feature is immaterial to the vehicle.

C. **Claims 10 and 20 are** rejected under 35 U.S.C. 103(a) as being unpatentable over Tsutsumikoshi in view of Ohyama et al 6547024.

Tsutsumikoshi does not disclose a helmet storage bin between the handlebar and seat, while Ohyama shows this bin 13 between handlebar 6 and rear seat 11. While Tsutsumikoshi's configuration is functionally equivalent, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this alternate arrangement, for different applications/vehicles, thus increasing applicability. It is clear that the location of the bin is not crucial to the proper operation of the vehicle.

D. **Claim 14 is** rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda 6725962 in view of Gagnon et al 6626260.

Fukuda discloses a vehicle 10 comprising

Frame 12 (including unidentified members), engine 30, seat 22, handlebar 28,

Front and rear suspensions (both unidentified, inherent),

Front 16, and rear 18, wheels,

CVT 76 comprising

Drive 78, and driven 80, pulleys,

Housing comprising one of the frame members (unidentified in fig 1;
tubular frame members supporting (at least) crankcase 54),

Gearbox 86 disposed proximal to the driven pulley,

Centrifugal clutch 70 connected to the driven pulley.

The reference does not disclose a swing arm disposed on the rear wheel, while Gagnon shows this component in c5, ln 32. Fukuda provides this configuration via c4, ln 38-41, where it is provided that the driveline 68 may have different embodiments, thus, a swing arm may be incorporated with the rear wheel, as shown in Gagnon.

Fukuda's integral swing arm and transmission configuration is functionally equivalent. it would have been obvious to one with ordinary skill in the art at the time the invention was made to include this alternate arrangement, as shown in Gagnon, to provide a component separate from the transmission so to be easily accessed for repair and maintenance, thus increasing safety and convenience.

E. **Claims 15 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda in view of Sakakibara et al 5052990.

Fukuda does not disclose the gearbox as planetary, while Sakakibara shows this type of gearbox 40, with its axis coaxial with that of the driven pulley 32, as depicted in fig 3.

While Fukuda's gearbox/transmission is functionally equivalent, it would have been obvious to one with ordinary skill in the art at the time the invention was made to include another type of transmission, as shown in Sakakibara, as one that is well-known and reliable, for different applications, thus increasing applicability. The coaxial configuration would have been obvious to render a more compact power unit arrangement, therefore providing increased comfort due to a smaller vehicle profile.

6. **Claims 11, 12 and 17-19** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Prior art does not disclose a vehicle as described above further comprising, *inter alia*, the swing arm pivot axis as substantially aligned with the driven pulley axis.

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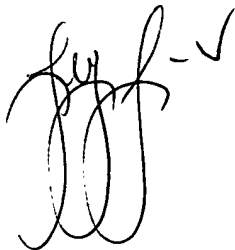
7. The prior art made of record, and not relied upon, is considered pertinent to the disclosure: Kuji et al 6719084, Yamauchi 6666290, Matsuura 6581716, Szymkowiak 6454031.

8. Communication with USPTO/Examiner

Any inquiry concerning this communication, or others, should be directed to Ms. Lum at 571 272 6649, M-F, 9-5. If attempts to reach the examiner are unsuccessful, her supervisor, Ms. Lesley Morris is at 571 272 6651. Our fax number is 703 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications: private PAIR only, for published applications: private or public PAIR. For more information re PAIR: <http://pair-direct.uspto.gov>. Questions re private PAIR: contact the Electronic Business Center (EBC) at 866 217-9197.

Ms. Lee S. Lum
Examiner
4/25/05

A handwritten signature in black ink, appearing to be 'Lum', followed by a checkmark.